

agreement, a LEC must charge its tariffed rates, and nothing in the Act suggests otherwise.

Indeed, LECs have no choice in this. "It is well-established that rates published in tariffs are rates imposed by law and operate to control the rights and liabilities between parties."<sup>23/</sup> Paging providers should pay those tariffed rates until agreements are reached, subject to refund should the rates later be found unlawful. The Commission has repeatedly held that "a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's tariffed charges and regulations."<sup>24/</sup> This initial period of implementation of the Telecommunications Act of 1996 has been fraught with uncertainty and ambiguity. But those circumstances do not justify total disdain for the legal requirements to pay in accordance with tariffs and to engage in good faith negotiations.<sup>25/</sup>

In the course of its review of the Letter, the Commission should require paging providers to engage in interconnection negotiations and, in the absence of interconnection agreements, to pay for services in accordance with tariffs. Paging providers should not be

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<sup>23/</sup> *Bell Telephone Company of Pennsylvania*, Memorandum Opinion and Order, 66 F.C.C.2d 227 (1977); see also, e.g., *Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co.*, 284 U.S. 370 (1932); *MCI Telecommunications Corp.*, 62 F.C.C.2d 703 (1976).

<sup>24/</sup> *Business WATS Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 7942 (1992) (citing *MCI Telecommunications Corp.*, 62 F.C.C.2d at 705-06 (customer may not withhold payment for properly billed tariffed charges for voluntarily ordered services)); see also, e.g., *The Bell Telephone Company of Pennsylvania*, 66 F.C.C.2d at 229 (self-help remedies are contrary to section 203 of the Act and existing case law).

<sup>25/</sup> U S WEST notes that in the period since enactment of the Telecommunications Act of 1996 it has entered into 77 contracts with two-way CMRS carriers based on TELRIC costs and reciprocal compensation. These rates were not implemented until the contracts became effective after negotiations and/or arbitration and state commission approval.

permitted to simply assume that unlimited services will be made available for free and to withhold payment for services that LECs are providing. They should avail themselves of the lawful mechanisms for resolving these payment disputes, such as provisos for reformation of interconnection agreements, refunds upon order by states, and escrow of disputed funds pending such orders. Even if the Commission does not reverse the Letter, it should make clear to paging providers that negotiated and arbitrated interconnection agreements are the means for implementing the Bureau's new rule.

## CONCLUSION

For these reasons, U S WEST submits that the Letter is unlawful, and requests that the full Commission review and reverse the conclusions set forth therein. If the Commission does not reverse the Letter, U S WEST asks the Commission to take steps to avoid a confiscatory effect of implementation of the Act. Whether the Commission reverses or upholds the Letter, U S WEST also requests the Commission to order paging providers to comply with the obligation to negotiate in good faith pursuant to sections 251 and 252 of the Act.

Respectfully submitted,

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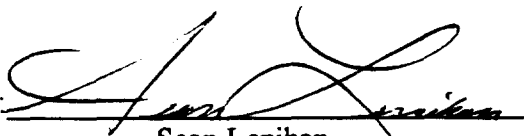
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January 29, 1998

## Certificate of Service

I, Sean Lenihan, do hereby certify that a copy of the foregoing Application for Review of US WEST, Inc. has been served on all parties of record, via first class mail, postage prepaid, on this 29th day of January, 1998.

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